

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

and

JOHN OTERO,

Plaintiff-intervenor,

vs.

No. CIV 95-1199 JP/LCS

WAL-MART STORES, INC.,

Defendant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court upon Plaintiff-intervenor John Otero's Motion to Award Attorneys' Fees and Attorneys' Expenses for Appeal (*Doc. 165*), filed April 6, 2000. The United States Magistrate Judge, having considered the motion, the memoranda of the parties, and the relevant law, proposes finding that Plaintiff-intervenor's motion is well taken in part, and recommends that Plaintiff-intervenor be awarded attorney fees of \$8,021.91 and expenses of \$699.14 for services performed on appeal.

Proposed Findings

1. Plaintiff-intervenor John Otero was the prevailing party in Defendant's appeal of

the Court's judgment to the Tenth Circuit Court of Appeals. The Tenth Circuit Court of Appeals found that Otero is entitled to attorney fees and expenses on appeal, but remanded the case to the district court for a determination of the proper amount to be awarded to Otero.

2. Otero's counsel, Steven K. Sanders, submitted an Affidavit stating that an hourly rate of \$175.00 per hour was consistent with prevailing rates for attorneys with comparable skills and experience in the Albuquerque, New Mexico area. Mr. Sanders also submitted time records showing 89.15 hours spent on the appeal, as well as a list of expenses totaling \$1,033.62.

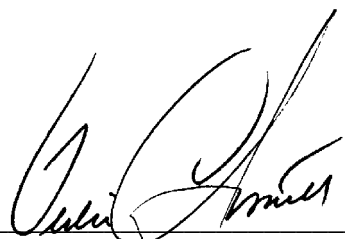
3. Judge Parker found that \$125 per hour was a reasonable value for Mr. Sanders' services, considering his role as co-counsel to the EEOC attorneys. *See* Mem. Op. & Order (*Doc. 151*), filed April 27, 1998. I propose finding that there is no reason why Mr. Sanders' rate for services on appeal should be different from the \$125 per hour that Judge Parker found to be reasonable.

4. I propose finding that the number of hours spent by Mr. Sanders researching issues on appeal and preparing for oral arguments exceeds the number of hours that a reasonable attorney would spend on those tasks. I propose finding that 60.65 hours is a reasonable number of hours that would be spent by an attorney with Mr. Sanders' skill and experience. Applying the rate of \$125 per hour and 5.8125% Gross Receipts Tax yields a total of \$8,021.91 for attorney fees on appeal.

5. I propose finding that the expenses listed by Mr. Sanders exceeds the amounts that a reasonable attorney would spend. I propose finding that a more reasonable amount of expenses would be \$699.14.

Recommended Disposition

I recommend that Plaintiff-intervenor be awarded attorney fees on appeal of \$8,021.91 and attorney expenses of \$699.14. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

A handwritten signature in black ink, appearing to read 'Leslie C. Smith', is written over a horizontal line.

Leslie C. Smith
UNITED STATES MAGISTRATE JUDGE